

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

939 ELLIS STREET - SAN FRANCISCO, CALIFORNIA 94109

ENVIRONMENTAL JUSTICE WORKING GROUP (EJWG)

DRAFT MINUTES OF MARCH 28, 2001 MEETING

- 1. Welcoming and Introduction.** *EJWG Members Present:* Ellen Garvey, BAAQMD Executive Officer, EJWG Chair; The Hon. Mark Ross, BAAQMD Board; LaRonda Bowen, Facilitator; Bob Fletcher, Division Chief, Planning & Technical Support, CARB; Enrique Manzanilla, Cross-Media Division Director, US EPA Region IX; Ceil Scandone, Senior Planner, ABAG; Bradley Angel, Greenaction; Melvin Gaines, Youth United for Community Action; Pamela Chiang, Asian Pacific Environmental Network; Kyle Yamasaki, Silicon Valley Toxics Coalition; Olin Webb, Bayview Hunters Point Community Advocates; Karleen Lloyd, People United for a Better Oakland; Katie Silberman, Center for Environmental Health; Cindy Tuck, General Counsel, California Council for Environmental and Economic Balance; Won Choe, Korean Dry Cleaner Association; Ethel Dotson, Citizens for a Better Environment; Peter McGaw, Co-Chair, Environmental Task Force, Contra Costa Council; (*EJWG Members Absent:* Henry Clark, West County Toxics Coalition; Andrew Clark-Clough, Public Works Agency, City of Oakland; Renee Morrison, Chester St. Block Club Association; Don Hightower, A. Phillip Randolph Institute – AFL/CIO; Jim Payne, PACE 8-5; Karen Licavoli, MPH, American Lung Association; Justin Bradley, Silicon Valley Mfg. Group.)

District Staff Present: Peter Hess, DAPCO; Robert Kwong, District Counsel; Bill deBoisblanc, Permit Services Division Director; Teresa Lee, Public Information & Education Division Director; Jim Guthrie, Compliance & Enforcement Division Director; Chris Schaufelberger, EJ Program Manager; James N. Corazza, Deputy Clerk of the Boards.

Public Members Present: Dennis Bolt, Western States Petroleum Association; Dan Phelan, CCEEB; Richard Grow, EPA Region IX EJ Team; Karen Susag, Communities for a Better Environment; Ralph McClain, WRO; Doug Shin, Korean Dry Cleaners Association; Crema Medina, YUCA; Carla Moore, EPA; Dorothy Wilson, PUEBO; Mark Wilson, California Energy Commission.

Following a non-agendized, off-the record discussion held from 6:16 p.m. – 7:15 p.m. regarding a letter from the EJAQC dated March 22, the EJWG meeting was formally convened at 7:20 p.m.

- 2. Review of Minutes of 1/10/01.** On motion of Ms. S. Chiang; seconded by Ms. Silberman; carried.
- 3. Public Comment Period.** Mr. McGaw moved the Agenda be modified to initially include a Public Comment Period, followed by the discussion of Items 5 and 3; seconded by Mr. Fletcher; carried.

Ms. S. Chiang stated the EJAQC sent a letter on March 22 to the District expressing concerns about the lack of enforcement of pending violations, its unwillingness to respond to public records requests, and the failure to schedule community meetings to discuss issues relative to enforcement, odor nuisance abatement and toxic air contaminant emissions at the IES and Red Star Yeast facilities. Director Ross requested clarification from staff. Ms. Schaufelberger replied that over the last six months, she had made numerous attempts to meet with Rene Morrison, to whom she also sent the compliance history of the Red Star Yeast facility in preparation for a community meeting, but had not met with success in contacting her. Ms. Schaufelberger added that she had also contacted several West Oakland neighborhood groups about the possibility of community meetings, and that none of them had indicated any interest in participating in such meetings.

Mr. Angel indicated it was his understanding from Ms. Morrison that the District contended the Red Star Yeast meeting could not take place until after the meeting was held in East Palo Alto to discuss the Romic facility, and that Ms. Morrison had not agreed with such a scheduling delay. Director Ross inquired if a meeting on Red Star Yeast could be held in April in parallel with the Romic meeting. Ms. Schaufelberger and Mr. Angel indicated they would work on its scheduling.

Mr. Green stated the EJAQC believes the large number of outstanding violation notices indicates a failure on the part of the District to ensure compliance with permit conditions, and the District's refusal to fulfill public records requests regarding permit information diminishes the opportunity for genuine public participation. Ms. Silberman elaborated that the failure to prosecute and collect fines for a backlog of 1,275 violations, among which IES and Romic have the greatest number, also sends a message to the community that industry is more important to the District than public health. Ms. P. Chiang added that if access to permit information is denied, it precludes meaningful public participation; moreover, it is ironic for the District to ask the EJ community for input as to how to improve public outreach when it simultaneously denies the public its information requests. Mr. Yamasaki added that the EJAQC is also concerned over the lack of public notification about the operation of back-up diesel generators at the 147-acre US Dataport server farm in Silicon Valley and the impact of diesel emissions on low income communities in Milpitas and San Jose.

Ms. Susag noted that during a toxics tour of Richmond in the first weekend of March, she personally witnessed blue smoke emitting from the Chevron facility for approximately two hours, and after contacting the District's odor line, was told no one was on duty on the weekend but that an inspector would investigate the following Monday. Inspector follow-up on Monday indicated a report from Chevron estimated that this emission lasted no more than 20-seconds; however, this type of emission occurs monthly, and the absence of weekend inspection staff is rather disturbing.

Mr. Angel stated that on February 7 he had personally witnessed a five-minute, continuous emission of dark smoke from the IES facility, which he then called in to the District. Subsequent inspector follow-up was based on IES equipment read-outs that indicated the emission lasted only for 11 seconds. Mr. Angel indicated that he has not yet heard back from the inspector regarding his request for further evaluation of the large discrepancy in reported time for this emission event.

Ms. S. Chiang stated that while a commitment was made at the outset of the EJWG process to hold some meetings in impacted communities, so far none have been scheduled. She also formally requested a separate meeting with District management to discuss the March 22 EJAQC letter.

Mr. Webb observed that the Bayview Hunter's Point community is already impacted by freeway emissions, and longer operations of the high-polluting back-up generators in that community may have a disproportionate pollution impact; hence, the District should commence with monitoring in that area. Ms. Garvey responded that while to date neither PG&E nor the ISO have informed the District as to the engines which run on interruptible contracts, the District will soon modify its regulations to require that engines greater than 50hp receive a permit. Mr. Hess added the public hearing on this amendment will take place at 9:30 a.m. at the July 18 Board Regular meeting.

Mr. deBoisblanc clarified that currently, the permit regulations exempt a standby engine if it is used for less than 100 hours of testing and 200 hours of actual usage during black-out conditions. The rule amendment will eliminate this exemption for all engines greater than 50hp: henceforth, these must receive a permit, which will contain CARB certification requirements for emissions of particulate matter and NOx, and impose limits on engine testing and emergency usage operation.

Director Ross noted that PM emission levels may be expected to be higher this summer when the back-up generators are expected to run at higher levels. Mr. Fletcher responded that the reduction of diesel particulate is one of CARB's highest priorities; and that it has the authority to promulgate stationary source regulations when these emit toxics—among which diesel particulate has been listed—and that CARB is working toward adopting a regulation on this type of emission.

The Public Comment period closed at 7:50 p.m. and Ms. Garvey suggested that the presentations from EPA and ARB on federal and state EJ activities could be deferred to the next meeting, with a discussion on consensus held in the remaining time, to which general agreement was expressed.

4. **Complete Discussion on Use of Consensus Process for EJWG Recommendations.** Ms. Bowen noted that some JEWG participants were comfortable signing the document circulated by the EJAQC at the previous meeting and others were not; and that all had expressed a commitment to helping the BAAQMD accomplish the tasks assigned to them by the Board. She reminded the group that consensus did not require absolute agreement by each participant on an issue, and that all points of view would be reported to the Board. Ms. Lloyd observed that CCEEB refuses to endorse the District's Guiding Principles, and while it has adopted its own EJ principles, its EJ publication fails to mention the community, and instead references only industry and elected officials. If the EJWG's goals are to be crafted within the context of implementing the District's Guiding Principles, CCEEB's participation in the EJWG without endorsing them constitutes bad faith and obviates the basis for a consensus-based decision-making process. Ms. Tuck responded that while CCEEB declined to sign on to the endorsement sheet prepared by the EJAQC, it remains committed to work on EJ, has adopted its own EJ principles, believes there is plenty of room within which to work toward agreement, and feels it should be given the opportunity to participate.

Ms. P. Chiang expressed her feeling that the failure to sign the EJAQC document is an indication of poor faith and that the EJAQC would now like to move to a voting process. Director Ross opined that if there is no consensus on premise, the premise would never lead to consensus. Mr. Angel opined that even allowing industry representatives such as CCEEB to participate in an EJWG meeting is an inherent conflict-of-interest, and Ms. Lloyd added that community groups were solely responsible for bringing EJ to the table in the first place. Ms. Tuck replied that the Board could have chosen to have only EJ groups at the table, but instead sought a wide array of stakeholders such as CCEEB—which represents business, labor and the public—so as to obtain a broad variety of different views. Ms. Silberman opined that the EJWG's charge is to craft recommendations to improve EJ at the District rather than to debate whether there should be EJ, and any participant not committed to it is by definition opposed to it. Ms. Lloyd concluded that the EJAQC cannot at the present time agree to a consensus process. Further discussion of the consensus process was forwarded to the May EJWG meeting as the first item on the agenda.

5. **Update on US EPA and CARB EJ Activities.** This item was deferred to the next meeting.
6. **Continue Discussion on How District Can Improve or Develop Strategies for Public Outreach and Education Programs.** This item was deferred to the next meeting.
7. **Set Next Meeting Date.** 6:00 p.m., Wednesday, May 23, 2001, Board Room, 939 Ellis Street, San Francisco. A separate meeting for the APCO, DAPCO, Enforcement and Legal Division to discuss the EJAQC's March 22 letter with EJAQC was set for April 17th at 6:00 p.m. at MTC in Oakland.
8. **Adjourn.** 8:07 p.m.

Submitted by James Corazza, Deputy Clerk